

)	
T.G., Appellant)	
)	
and)	Docket No. 20-1549
)	Issued: August 3, 2021
U.S. POSTAL SERVICE, COBB POST OFFICE,)	
Cobb, CA, Employer)	
)	

Case Submitted on the Record

Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 19, 2020 appellant, through counsel, filed a timely appeal from a May 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on May 15, 2018, as alleged.

FACTUAL HISTORY

On June 4, 2018 appellant, then a 47-year-old part-time flexible letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2018 she injured her lower back, legs, and right arm when picking up a mail cage while in the performance of duty. On the reverse side of the claim form appellant's supervisor indicated that the injury was caused by appellant's willful misconduct as she had performed an unsafe act. She further indicated that the facts concerning the injury did not agree with statements from appellant or witnesses. Appellant stopped work on June 1, 2018.

In support of her claim, appellant submitted an x-ray report of her lumbar spine, dated May 31, 2018, which revealed mild degenerative changes without acute fracture or dislocation. Appellant also submitted hospital discharge notes dated May 31 and June 11, 2018.

In a narrative statement dated May 31, 2018, appellant noted that on May 14, 2018 she helped a mail truck driver lift a mail cage. She indicated that she felt her back pop in her lower spine, causing a shooting pain down her legs. Appellant further noted that she informed her coworkers, supervisor, and postmaster of the employment incident and her resultant lower back pain. She reported that no one had contacted her regarding the incident since May 14, 2018. Appellant asserted that her back pain had worsened and that the pain made her nauseous and prevented her from sleeping, standing, or sitting at times. She indicated that her back pain had not improved with medication and ice packs.

In a May 31, 2018 witness statement, J.R., appellant's coworker, noted that on May 26, 2018 appellant informed him of the employment incident and her continuing back pain.

In a May 31, 2018 witness statement, S.N., appellant's supervisor, noted that on May 25, 2018 appellant reported injuring her back while helping a truck driver pick up a cage. He indicated that he did not take action because appellant did not "seem to want" it. S.N. further reported that appellant told him that she felt a burning feeling in her back on May 29, 2018.

OWCP also received copies of e-mails, dated June 4, 2018, from S.C. and J.T., appellant's coworkers. S.C. and J.T. noted that appellant complained of back pain on May 14, 2018 after helping a truck driver lift a cage. They indicated that appellant continued to work after the employment incident.

In a June 7, 2018 witness statement, R.L., a contractor for the employing establishment, noted that on May 14, 2018 he was unloading mail cages onto a lift gate. He indicated that appellant helped him lift a cage despite him telling her that he could handle it. R.L. reported that appellant responded affirmatively when he asked her if she was all right.

In a letter dated June 8, 2018, M.L., appellant's supervisor, noted that appellant reported the alleged employment incident on May 31, 2018. She indicated that she heard of the incident in

passing, but did not begin the accident reporting process until May 31, 2018 when appellant reported the incident directly.

In a separate letter of even date, M.L. controverted appellant's claim asserting that appellant delayed reporting the employment incident and continued to work without restrictions. She further asserted that appellant had complained of headaches in the past and had attendance issues. M.L. contended that appellant's statement of the employment incident did not concur with other witness statements.

In a June 11, 2018 report, Katherine Pisesky, a nurse practitioner, noted that appellant experienced back pain after helping a coworker lift a cage at work. She examined appellant and diagnosed lumbosacral strain.

By development letter dated June 22, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received lumbar spine magnetic resonance imaging (MRI) scan reports dated June 18, 2015 through June 21, 2018.

Appellant submitted reports and work excuse notes, dated May 31 through July 16, 2018, from nurse practitioners, who listed appellant's work restrictions and provided updates of her treatment related to her back pain.

In a June 11, 2018 emergency department report, Dr. Jared Greenholz, a Board-certified emergency medicine specialist, noted that appellant complained of a back injury sustained on May 14, 2018. He indicated that appellant "assisted [a] man who was yelling at her to help him after he fell by attempting to lift a cage." Dr. Greenholz reported that appellant felt a pop in her lumbar spine when lifting the cage and experienced immediate pain that had progressively worsened. He provided physical examination findings and diagnosed lumbosacral strain.

Appellant submitted emergency department discharge notes and a work excuse note from Dr. Gary Young, a Board-certified emergency medicine specialist, dated June 27, 2018.

In a June 29, 2018 statement, appellant clarified that the employment incident occurred on Tuesday, May 15, 2018. She asserted that she informed her supervisor, M.L., of the incident that day and indicated that M.L. gave her ibuprofen and work restrictions. Appellant noted that M.L. did not offer to send her to the hospital or give her any forms. She reported that she informed her coworkers, J.R., S.N., S.C., and J.T., of the employment incident and her back pain. Appellant alleged that R.L., a contractor for the employing establishment, was not present on the date of the employment incident.

In progress reports, dated July 2 and 16, 2018, Dr. Daniel Weinberg, a Board-certified specialist in family medicine, diagnosed lumbar spine sprain and held appellant off work.

On July 16, 2018 appellant responded to OWCP's development questionnaire. She reiterated her account of the employment incident and noted that the date of the incident was

May 15, 2018. Appellant indicated that she informed her coworkers, supervisor, and postmaster of the incident.

By decision dated July 25, 2018, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that the alleged event occurred on May 15, 2018 as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received a June 27, 2018 report from Dr. Young who noted that appellant injured her back at work on May 14, 2018. Dr. Young examined appellant and diagnosed acute left-sided low back pain with left-sided sciatica. In an accompanying emergency department note, he advised that appellant was unable to perform her usual work.

On August 21, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In support of her request, appellant submitted a lumbar spine MRI scan report dated August 6, 2018, which revealed no significant interval change.

Dr. Young, in an August 6, 2018 report, noted that appellant felt a pop in her low back when helping a truck driver lift a cage on May 15, 2018. He examined appellant and diagnosed acute exacerbation of chronic low back pain.

In a letter dated October 25, 2018, Dr. Kimberly Fordham, a Board-certified family practitioner, described the employment incident and opined that appellant's conditions were related to the bending, lifting, and twisting motion of the lower back that occurred on May 15, 2018.

By decision dated November 5, 2018, OWCP's hearing representative affirmed the July 25, 2018 decision.

OWCP subsequently received notes, dated August 8 through 21, 2018, from Ms. Jordan who described appellant's treatment and provided physical examination findings.

In an October 22, 2018 response, counsel argued that appellant's account of the employment incident was detailed and consistent. She asserted that the truck drivers' statement was self-serving and dishonest and should not be considered. Counsel contended that appellant helped lift a cage of mail to assist in keeping the mail moving despite not being specifically authorized to do so. She noted that appellant's coworkers were not qualified to assess her pain or medical conditions. Counsel argued that there was no strong or persuasive evidence to refute appellant's claim that she injured her back while helping a truck driver lift a cage of mail. She explained that while appellant originally listed the date of the incident as May 14, 2018 and not May 15, 2018, this was a simple error that had promptly been corrected in the record. Counsel noted that the postmaster's statement conflicted with appellant's supervisor's statement regarding the date that appellant reported the incident. She contended that appellant's case should be remanded for further development and adjudication based on the medical evidence and appellant's statements.

On November 30, 2018 appellant requested reconsideration.

In support of her request, appellant submitted a July 25, 2018 statement from M.C., a postmaster, who noted that appellant informed him of the employment incident on May 31, 2018. M.C. advised appellant to write a statement and report the incident to the employing establishment. Appellant also submitted statements from her friends and former employer, dated October 3 through November 26, 2018, who attested to her honesty.

In September 5 and December 10, 2018 duty status reports (Form CA-17), a November 12, 2018 restriction assessment, and a December 10, 2018 work excuse note, appellant's work restrictions were noted.

A lumbar spine MRI scan report addendum dated October 25, 2018 revealed a small left paracentral disc protrusion at L4-5 that was likely not clinically significant.

In an October 31, 2018 report, Dr. Marcia Luisi, a Board-certified specialist in physical medicine and rehabilitation, noted that appellant experienced pain and numbness in her lower back and left leg after feeling a pop in her back on May 15, 2018. She examined appellant and reviewed an electromyography and nerve conduction studies. Dr. Luisi found no electrodiagnostic evidence of left lumbosacral radiculopathy or plexopathy. She recommended x-rays of appellant's lower back and physical therapy treatment.

In a November 6, 2018 report, Dr. Parinaz Azari, a Board-certified physical medicine and rehabilitation specialist, noted that appellant had chronic low back pain after a work incident on May 15, 2019. She provided physical examination findings.

In a December 1, 2018 statement, appellant reiterated her account of the employment incident and disputed her coworkers' statements, noting that they were not qualified to assess her medical conditions.

By decision dated January 23, 2019, OWCP denied modification of the November 5, 2018 decision.

On February 19, 2019 appellant requested reconsideration.

By decision dated March 28, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On January 22, 2020 appellant, through counsel, again requested reconsideration. Counsel argued that the witness statements of record showed that appellant promptly reported the employment incident. She asserted that there were no serious inconsistencies with regard to the material allegations made by appellant and that the date of the employment incident was clarified. Counsel attached a statement from appellant who explained that R.L., a contractor for the employing establishment, was not present on May 15, 2018. Appellant asserted that a sub driver was present on the date of the employment incident and provided a description and sketch of the driver. She indicated that she contacted R.L. who confirmed that he was not present on May 15, 2018.

By decision dated May 22, 2020, OWCP denied modification of the January 23, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of

³ *Id.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.A.*, Docket No. 20-1284 (issued January 27, 2021); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *M.F.*, Docket No. 19-0578 (issued January 26, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *G.E.*, Docket No. 20-1081 (issued January 26, 2021); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *C.R.*, Docket No. 20-1147 (issued January 5, 2021); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.¹¹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on May 15, 2018, as alleged.

In a May 31, 2018 narrative statement, appellant alleged that on May 14, 2018 she assisted a truck driver with lifting a mail cage. She indicated that she felt her back pop in her lower spine causing a shooting pain down her legs. Appellant noted that she informed her coworkers, supervisor, and postmaster of the employment incident and her lower back pain. In a June 29, 2018 statement, appellant clarified that the employment incident occurred on May 15, 2018. She asserted that she informed her supervisor, M.L., of the incident on that date and indicated that M.L. gave her ibuprofen and work restrictions. Appellant alleged that R.L., a contractor for the employing establishment, was not present on the date of the employment incident.

In witness statements and e-mails, dated May 31 through June 8, 2018, appellant's coworkers and supervisors corroborated appellant's account of the employment incident and the fact that she informed them of the incident and her back pain. The employing establishment controverted appellant's claim, arguing that she delayed reporting the employment incident. However, in a May 31, 2018 witness statement, S.N., appellant's supervisor, noted that appellant reported the employment incident, but he did not take action because appellant did not "seem to want" it and that she continued to work. Additionally, in a letter dated June 8, 2018, M.L., appellant's supervisor, noted that she heard of the incident in passing, but did not begin the accident reporting process until May 31, 2018 when appellant reported the incident directly. The employing establishment also contended that appellant's statement was not consistent with R.L.'s June 7, 2018 witness statement who indicated that appellant helped him lift a cage despite him telling her that he could handle it. However, in a January 22, 2020 statement, appellant clarified that R.L. was not present on May 15, 2018. She asserted that a different driver was present on the date of the employment incident and provided a description and sketch of the driver.

The Board finds that appellant clarified the date of the incident and contemporaneously sought medical treatment. She submitted extensive medical evidence, including an August 6, 2018 report from Dr. Young, an October 25, 2018 letter by Dr. Fordham, and an October 31, 2018 report from Dr. Luisi, which provided a single account of the mechanism of injury that has not been refuted by any evidence in the record.¹² As noted above, a claimant's statement that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹³ Appellant's account of the incident is consistent with the surrounding facts and circumstances and her subsequent course of action does not cast

¹¹ K.F., Docket No. 18-0485 (issued February 18, 2020); D.R., Docket No. 19-0072 (issued June 24, 2019).

¹² G.E., *supra* note 9.

¹³ *Supra* note 10.

doubt on the validity of her claim.¹⁴ The Board therefore finds that appellant has established that the employment incident occurred, as alleged, on May 15, 2018. Appellant has, thus, established the first component of fact of injury.¹⁵

As appellant has established that the May 15, 2018 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁶ As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The Board will therefore set aside OWCP's May 22, 2020 decision and remand the case for consideration of the medical evidence of record.¹⁷ After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a medical condition causally related to the accepted May 15, 2018 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on May 15, 2018, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established a medical condition causally related to the May 15, 2018 employment incident.

¹⁴ *L.F.*, Docket No. 19-1275 (issued October 29, 2020).

¹⁵ *Supra* note 8.

¹⁶ *Supra* note 9.

¹⁷ *T.A.*, *supra* note 77.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 3, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board